

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6704

BILL NUMBER: HB 1361

NOTE PREPARED: Dec 28, 2014

BILL AMENDED:

SUBJECT: Performance Bonds for State Highway Contracts.

FIRST AUTHOR: Rep. Sullivan

BILL STATUS: As Introduced

FIRST SPONSOR:

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☒ **FEDERAL**

IMPACT: State

Summary of Legislation: The bill provides that, after June 30, 2015, the Indiana Department of Transportation (INDOT) shall require the lowest and best bidder for a state highway contract to submit a performance bond payable to the state not more than 10 days after the contract is let. (Current law requires each bidder for a contract for a project with an estimated cost of more than \$200,000 to submit a bid guarantee and a performance bond.)

The bill provides that, if a bidder fails to submit the performance bond within 10 days, INDOT shall let the contract to the next lowest and best bidder. It also provides that a bid guarantee or performance bond must be on forms: (1) specified by INDOT; or (2) provided by surety companies and approved by INDOT.

Effective Date: July 1, 2015.

Explanation of State Expenditures: *INDOT:* The bill may decrease construction costs for INDOT, as limiting the necessity of bidders to provide bonding on each project on which they bid will likely save those bidders money. Typically, surety bond companies charge between 1% and 15% of the total bond amount to the bond applicant, and INDOT requires performance bonds to be for an amount that covers 100% of work within the project right-of-way. These savings may be passed onto INDOT in the form of lower contract awards. The total amount of savings is indeterminate at this time.

INDOT is required to either provide the forms for bid guarantees and performance bonds or must approve surety companies that provide bonding for INDOT projects. These requirements are within INDOT's routine administrative functions and should be able to be implemented with no additional appropriations, assuming near customary agency staffing and resource levels.

Additional Information: There are typically three types of surety bonds used in highway construction: the bid guarantee, the performance bond, and the payment bond. The bid guarantee provides assurance that the bid has been submitted in good faith and that the bidder intends to enter into the contract at the price bid and will also provide the required performance and payment bonds. The performance bond protects INDOT from financial loss should the contractor fail to perform in accordance with the contract's terms and conditions. The payment bond guarantees that the contractor will pay subcontractors, laborers, and material suppliers associated with the project, but this bond type is not addressed in the bill.

When contracting agencies require bid guarantees and performance bonds, this is one method of contractor prequalification, as the surety companies who issue the bonds have already performed their own due diligence in the issuance of the required bonds. Several studies suggest, however, that this prequalification method (that relies on bonding as a guarantee of work) is not necessarily the best indicator of whether or not a contractor will perform well on a particular construction project.

In addition to state law, bonding on certain construction projects are required by a federal law (the Miller Act). The Miller Act requires that all federally funded construction projects in excess of \$100,000 (including transportation projects) require performance and payment bonds. The Miller Act only applies to the contractor chosen to complete the project and not to all bidders on the project.

Explanation of State Revenues:

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: INDOT.

Local Agencies Affected:

Information Sources: INDOT permits webpage, www.in.gov/indot/2501.htm; Associated General Contractors of America Miller Act webpage, www.agc.org/cs/advocacy/legislative_activity_miller_act; Michin Jr., R.E. and Smith, G.R. *Quality-Based Performance Rating of Contractors Prequalification and Bidding Purposes*, http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_w38.pdf. Transportation Research Board. Accessed 12/17/2014; Gransberg, D. And Reimber, C. NCHRP Synthesis 390: Performance-Base Contractor Prequalification, http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_syn_390.pdf. Transportation Research Board. Accessed 12/17/2014

Fiscal Analyst: Stephanie Wells, 232-9866.